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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 JONATHAN CARTER,

11 Plaintiff,

12 v.

13 FAMILY AND CHILD TREATMENT OF
14 SOUTHERN NEVADA,

15 Defendant.

Case No. 2:04-cv-0409-KJD-RJJ

ORDER

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17 Presently before the Court is Defendant Family and Child Treatment of Southern Nevada's
18 Motion for Summary Judgment (#91). Plaintiff filed a Response in Opposition (#93) to which
19 Defendant filed a Reply (#94).

20 **I. Facts and Procedural History**

21 Plaintiff's Complaint brings claims against Family and Child Treatment of Southern Nevada
22 ("FACT") for intentional infliction of emotional distress, negligence, and negligent supervision. The
23 allegations in the Complaint center around Plaintiff's participation in FACT's treatment program for
24 sex offenders. Plaintiff participated in FACT's treatment program pursuant to the arrangements of
25 his guilty plea in a criminal matter.
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1 Plaintiff filed his Complaint against Defendants Clark County, the Nevada Department of
2 Motor Vehicles and Public Safety, the Nevada Department of Parole and Probation, and FACT.
3 Plaintiff conceded that the Nevada State defendants had to be dismissed because the action had been
4 previously dismissed twice under Rule 41(a). Upon considering motions to dismiss, the Court
5 concluded that Plaintiff's claims against Clark County were barred by the statute of limitations, and
6 Plaintiff's claims against FACT were barred by claim preclusion since FACT had privity with the
7 Nevada State Defendants (#15). On appeal, the Ninth Circuit affirmed this Court's dismissal of
8 Defendant Clark County but reversed the Court's dismissal of Defendant FACT (#66). Specifically,
9 the Ninth Circuit found that the Court had improperly relied upon FACT's contract with the State
10 while considering a Rule 12(b)(6) motion to dismiss, because it considered evidence outside of the
11 pleadings. Therefore, FACT is the only remaining defendant in this action.

12 Subsequently, FACT filed the present Motion for Summary Judgment. The Court has
13 reviewed the Motion, Response, and Reply, and, consistent with the Memorandum issued by the
14 Ninth Circuit, now issues this order granting FACT's Motion for Summary Judgment.

15 **II. Summary Judgment Standard**

16 The Court should grant summary judgment "if the pleadings, the discovery and disclosure
17 materials on file, and any affidavits show that there is no genuine issue as to any material fact and
18 that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56 (c)(2); see also,
19 Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The moving party bears the initial burden of
20 showing the absence of a genuine issue of material fact. See Celotex, 477 U.S. at 323.

21 The burden then shifts to the nonmoving party to set forth specific facts demonstrating a
22 genuine factual issue for trial. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
23 587 (1986); Fed. R. Civ. P. 56(e). "[U]ncorroborated and self-serving testimony," without more, will
24 not create a "genuine issue" of material fact precluding summary judgment. Villiarimo v. Aloha
25 Island Air Inc., 281 F.3d 1054, 1061 (9th Cir. 2002). Summary judgment shall be entered "against a
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1 party who fails to make a showing sufficient to establish the existence of an element essential to that
 2 party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322.

3 "A conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is
 4 insufficient to create a genuine issue of material fact." F.T.C. Publishing Clearing House, Inc., 104
 5 F.3d 1168, 1171 (9th Cir. 1997). Therefore, vague and unsubstantiated testimony, even when given
 6 under oath, will not preclude summary judgment. "When a motion for summary judgment is
 7 properly made and supported, an opposing party may not rely merely on allegations or denials in its
 8 own pleading; rather, its response must— by affidavits or as otherwise provided in this rule— set out
 9 specific facts showing a genuine issue for trial." Fed. R. Civ. P. 56(e)(2).

10 **III. Plaintiff's State-Law Claims**

11 FACT seeks summary judgment on three separate grounds: 1) Plaintiff's claims fail as a
 12 matter of law, 2) Plaintiff's claims are barred by Defendant FACT's statutory immunity, and 3)
 13 Plaintiff's claims are barred by claim preclusion. Because the Court finds that Plaintiff's claims fail
 14 as a matter of law, it is not necessary that the Court address Defendant's remaining arguments.

15 **A. Intentional Infliction of Emotional Distress**

16 Plaintiff's intentional infliction of emotional distress ("IIED") claim against FACT fails as a
 17 matter of law. A plaintiff seeking to make a claim for IIED must establish "(1) extreme and
 18 outrageous conduct with either the intention of, or reckless disregard for, causing emotional distress,
 19 (2) the plaintiff's having suffered severe or extreme emotional distress and (3) actual or proximate
 20 causation." Star v. Rabello, 625 P.2d 90, 92 (Nev. 1981).

21 **i. Extreme and Outrageous Conduct**

22 Plaintiff has failed to raise a genuine issue of material fact regarding any extreme and
 23 outrageous conduct on the part of FACT. In his Response to Defendant's Motion, Plaintiff directs
 24 the Court to his answers to Defendant's interrogatories, wherein he provides general, vague, and
 25 conclusory opinions about FACT's conduct. For example, Plaintiff avers that FACT committed
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1 extreme and outrageous acts by depriving him of his civil rights and by using “threats, intimidation,
2 and harassment” during the counseling process. Such allegations, “lacking in detailed facts and
3 supporting evidence however, [are] insufficient to create a genuine issue of material fact.” F.T.C.
4 Publishing, 104 F.3d at 1171; see also, Fed. R. Civ. P. 56(e)(2). Plaintiff fails to provide detailed
5 facts or supporting evidence to substantiate these allegations. Therefore, Plaintiff’s vague allegations
6 of intimidation, harassment, and civil rights deprivations do not raise a genuine issue of material fact
7 regarding extreme and outrageous conduct on the part of FACT.

8 Plaintiff further alleges in his interrogatories that FACT set terms and conditions that were
9 designed to cause him to fail. However, Plaintiff’s allegation lacks detail, evidence, and specificity.
10 See Id. Plaintiff, for example, does not provide the Court with the text of any alleged term or
11 condition, or even his own recollection of any alleged term or condition of FACT’s treatment
12 program that caused him offense. Furthermore, Plaintiff fails to provide evidence to support his
13 allegation that FACT’s conditions were purposefully created to make him fail the program. A
14 treatment program for sexual offenders might reasonably include specific terms and/or conditions,
15 and Plaintiff fails to show how any of FACT’s terms and conditions had any purpose other than
16 rehabilitation. Given that the purpose of the contract between FACT and the state was to rehabilitate
17 sexual offenders, the Court cannot accept an ambiguous claim that FACT purposefully tried to make
18 him fail the program as extreme and outrageous conduct sufficient to support an IIED claim.

19 Plaintiff further alleges that FACT told Plaintiff that he would go to jail or have his probation
20 revoked if he did not comply with the treatment program. Accepting that this allegation is true, the
21 Court concludes that this is not extreme and outrageous conduct. FACT merely instructed Plaintiff
22 of what he already knew to be true. Because the completion of the treatment program was a
23 condition of Plaintiff’s probation, his failure to complete the program would have resulted in a
24 revocation of probation. Because Plaintiff fails to demonstrate any issue of material fact regarding
25 extreme and outrageous conduct on the part of FACT, this claim fails as a matter of law.

1 ii. Severe or Extreme Emotional Distress

2 Plaintiff fails to establish that he suffered emotional distress to a degree that could be
3 regarded as severe or extreme. Plaintiff's claimed injury was "harm caused to my well being, person
4 and mental anguish." (#93, p. 12.) Such self-serving allegations, however, are insufficient to create a
5 genuine issue of material fact. See F.T.C. Publishing, 104 F.3d at 1171. Furthermore, the Nevada
6 Supreme Court has rejected claims for IIED where the plaintiff claiming mental harm as his injury,
7 "presented no objectively verifiable indicia of the severity of his emotional distress." Miller v. Jones,
8 970 P.2d 571, 577 (Nev. 1988). Likewise, Plaintiff in the instant action failed to provide objectively
9 verifiable data that could demonstrate that his emotional distress was severe or extreme. Because
10 Plaintiff failed to establish that he experienced severe and extreme emotional distress, and failed to
11 establish any extreme or outrageous conduct on the part of FACT, the Court grants summary
12 judgment on this claim.

13 **B. Negligence**

14 Plaintiff's negligence claim against FACT fails as a matter of law. To prevail on a
15 negligence claim, a plaintiff must demonstrate "(1) the defendant owed a duty of care to the plaintiff;
16 (2) the defendant breached that duty; (3) the breach was the legal cause of the plaintiff's injury; and
17 (4) the plaintiff suffered damages." Scialabba v. Brandise Const. Co., Inc., 921 P.2d 928, 930 (Nev.
18 1996). In a summary judgment proceeding on a negligence claim, a trial court may grant summary
19 judgment on this claim if the defendant can show that "one of the elements of the plaintiff's prima
20 facie case is 'clearly lacking as a matter of law.'" Id. (quoting Sims v. General Telephone & Electric,
21 815 P.2d 151, 154 (1991)).

22 i. Duty

23 Whether a defendant owes a duty of care to a plaintiff is a question of law. Sanchez ex rel.
24 Sanchez v. Wal-Mart Stores, Inc., 221 P.3d 1276, 1280 (Nev. 2009). Therefore, it is for the Court to
25 make the determination regarding whether Defendant in the present action owed a duty to Plaintiff.

1 Though Plaintiff alleges in his complaint that FACT had a duty to “protect him from harm while on a
2 probationary sentence and/or probationary supervision,” (#1) Plaintiff has failed to provide evidence,
3 through affidavits or otherwise, that establishes such a broad duty. Accordingly, Plaintiff has failed
4 to establish that FACT had a duty to protect Plaintiff from harm while on his probationary sentence,
5 as alleged in the Complaint.

6 ii. Breach

7 Even assuming that Defendant owed the alleged duty of care to Plaintiff, Plaintiff fails to
8 raise a genuine issue of material fact regarding any breach of said duty. A litigant who opposes a
9 motion for summary judgment must show through *specific* facts that there is a genuine issue of
10 material fact that precludes summary judgment. See Fed R. Civ. P. 56(e)(2). Testimony from a
11 defendant that is “lacking detailed facts and any supporting evidence, is insufficient to create a
12 genuine issue of material fact.” F.T.C. Publishing Clearing House, Inc., 104 F.3d 1168, 1171 (9th
13 Cir. 1997).

14 Here, Plaintiff has failed to present specific facts supporting his allegation that FACT
15 breached its duty of care. Plaintiff supports his negligence claim with broad and vague allegations
16 that FACT intimidated and harassed him. (#93). Such broad allegations, however, are insufficient to
17 create a genuine issue of material fact because they lack specificity and detail. Fed. R. Civ. P.
18 56(e)(2). Furthermore, in Plaintiff’s Opposition to FACT’s Motion for Summary Judgment, Plaintiff
19 avers that FACT’s conduct went “beyond the scope of the range of competent counseling services to
20 be expected through a program such as FACT.” (#93). This allegation implies that FACT’s
21 employees committed medical malpractice. However, a plaintiff seeking to make a medical
22 malpractice claim must present testimony from an expert witness. Staccato v. Valley Hospital, 170
23 P.3d 503, 506 (Nev. 2007). Because Plaintiff failed to do so here, this claim for negligence fails as a
24 matter of law.

1 iii. Causation

2 Because Plaintiff has not adequately established specific facts demonstrating harm he
3 received as a result of Defendant's alleged negligence, his causation claim fails.

4 iv. Damages

5 Other than alleging that FACT's conduct was "harmful," (#93, p. 13) Plaintiff fails to
6 establish that he suffered damages as a result of FACT's alleged negligence. Because a litigant
7 opposing a summary judgment motion must show *specific* facts that raise a genuine issue, this
8 element of Plaintiff's negligence claim also fails. See Fed. R. Civ. P. 56(e)(2).

9 Because each negligence element is "clearly lacking," the Court grants summary judgment on
10 Plaintiff's negligence claim against FACT. Scialabba v. Brandise Const. Co., Inc., 921 P.2d 928,
11 930 (Nev. 1996).

12 **C. Negligent Supervision**

13 Plaintiff's claim for negligent supervision also fails as a matter of law. An employer "has a
14 duty to use reasonable care in the training, supervision, and retention of his or her employees to make
15 sure that the employees are fit for their positions." Hall v. SSF, Inc., 930 P.2d 94, 99 (Nev. 1996).

16 As detailed above, however, Plaintiff's Complaint fails to specify, beyond broad allegations
17 of intimidation and harassment, how FACT breached any duty to Plaintiff. Moreover, Plaintiff's
18 Opposition refers only to his own conclusory answers to FACT's First and Second Set of
19 Interrogatories. Specifically, Plaintiff avers that Fact's "conduct was harmful because it was beyond
20 the scope of the range of competent counseling services to be expected through a program such as
21 FACT," yet offers no facts or evidence to buttress his position (#93 at 13.)¹ Such sweeping
22 allegations, without more, cannot support a claim for negligent supervision.

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24 ¹For example, without offering any expert opinion or evidence, Plaintiff alleges that "[t]he conduct of FACT
25 counselor's appeared more geared to aid and assist the further prosecution and punishment of its participants than to help
26 the individuals." (#93 at 13.)

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3 **IV. Preclusion and Statutory Immunity Defenses**

4 Because Plaintiff's state-law claims fail as a matter of law, the Court need not address
5 whether FACT is shielded by statutory immunity or whether Plaintiff's claims are barred by claim
6 preclusion.

7 **V. Conclusion**

8 Accordingly, **IT IS HEREBY ORDERED** that Defendant FACT's Motion for Summary
9 Judgment (#91) is **GRANTED**;

10 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter **JUDGMENT** for
11 Defendant Family and Child Treatment of Southern Nevada and against Plaintiff Carter.

12 DATED this 12th day of August 2010.

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15 Kent J. Dawson
16 United States District Judge
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